Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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(3)

NO. 90-240

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

JAMES L. POLK AND MATTIE B. POLK,

Petitioners,

VERSUS

DIXIE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

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RESPONDENT DIXIE INSURANCE COMPANY'S RESPONSE IN OPPOSITION TO MOTION TO CONSOLIDATE

Respondent Dixie Insurance Company [Dixie][1] opposes the petitioners' Motion to Consolidate (served by mail on October 12, 1990) this case with Edmondson v. Leesville

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[1]The listing of Dixie's affiliated corporations required by U. S. Sup. Ct. Rule 29.1 is found on page iv of the Respondent's Brief in Opposition (served on September 4, 1990). There are no amendments to that listing.

Concrete Co., Inc., No. 89-7743, in which certiorari was granted on October 1, 1990, for the following reasons:

1. While Polk and Edmondson involve some of the same issues, there is at least one issue present in Polk which is apparently not present in Edmondson, *i.e.*, whether the petitioners properly raised the argument that the trial judge's participation in excusing prospective jurors supplied the requisite state action.

2. There are no significant factual differences between Edmondson and Polk which would be of assistance to the Court in resolving the issues presented. Consolidation would not assist the Court in its examination of these issues. Instead, consolidation would complicate the briefing and argument of Edmondson by adding two additional attorneys to the process. The more orderly and efficient method for the Court to handle Polk would be to act on Polk once it has ruled in Edmondson. If further action is required by the Fifth Circuit, the Court could then grant certiorari, summarily vacate the Fifth Circuit's judgment in Polk, and remand the case to the Fifth Circuit for further consideration in light of the Supreme Court's decision in Edmondson. See, e.g., Cary v. United States, U. S. Sup. Ct. No. 90-5183 (October 15, 1970) (granting leave to proceed in forma pauperis, granting certiorari, vacating judgment, and remanding to Eighth Circuit for further consideration in light of United States v. Eichman, 496 U.S. __ (1990)); Jones v. ABC, 59 U.S.L.W. 3275 (U.S. Oct. 9, 1990) (No. 89-1952) (granting certiorari, vacating judgment, and remanding case to Eleventh Circuit for further consideration in light of Milkovich v. Lorain Journal Co., 497 U.S. __ (1990)).

3. The Fifth Circuit rejected a similar motion to consolidate Polk with Edmondson before the en banc Fifth Circuit. Polk v. Dixie Insurance Co., 5th Cir. No. 88-4737 (5th Cir. May 15, 1989) (unpublished order; copy attached)

For these reasons, the Petitioners' Motion to Consolidate Polk and Edmondson should be denied.

This, the 19th day of October, 1990.

Respectfully submitted,

DIXIE INSURANCE COMPANY,
Respondent

BY: _____

Suzanne N. Saunders*
Saunders, Abel and Fortenberry, P.A.
Post Office Box 16295
Jackson, Mississippi 39236-6295
(601) 362-0596

Attorneys for Respondent

*Counsel of Record

CERTIFICATE OF SERVICE

I, Suzanne N. Saunders, counsel for Respondent Dixie Insurance Company, hereby certify that I have this day caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing RESPONDENT DIXIE INSURANCE COMPANY'S RESPONSE IN OPPOSITION TO MOTION TO CONSOLIDATE to the following attorneys of record at their last known mailing addresses, to-wit:

Jim Waide, Esquire
Post Office Box 1357
Tupelo, Mississippi 38802-1357

ATTORNEY FOR PETITIONERS IN NO. 90-240

*****

James B. Doyle, Esquire
Post Office Box 3527
Lafayette, Louisiana 70502

ATTORNEY FOR PETITIONER IN NO. 89-7773

*****

John B. Honeycutt, Esquire
Post Office Box 1632
Alexandria, Louisiana 71309-1632

ATTORNEY FOR RESPONDENT IN NO. 89-7773

This, the 19th day of October, 1990.

Susanne N. Saunders

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 88-4737

U.S. COURT OF APPEALS
FILED
MAY 15 1989
GILBERT F. GANUCHEAU
CLERK

JAMES L. POLK and
MATTIE B. POLK,

Plaintiffs-Appellants,

versus

DIXIE INSURANCE COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court for the Northern District of Mississippi

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O R D E R :

IT IS ORDERED that the motion of appellants to consolidate the referenced cause with cause No. 87-4804 - Edmonson vs. Leesville Concrete Company, Inc. - is denied.

Charles Clark
Chief Judge